

Michigan Judicial Institute  
**An Update on Sentencing  
Law & Procedure Seminar**

September 28, 2004

**Faculty:**

Hon. Richard Ryan Lamb  
9<sup>th</sup> Circuit Court  
Kalamazoo

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## Restitution

- Restitution is mandatory
- Recovery of restitution
- Restitution defined
- Restitution orders
- Rules & procedures governing orders of restitution
- Restitution hearing
- Enforcing the restitution order
- Miscellaneous issues

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## Sex Offender Registration Act

- Background information on Michigan Sex Offender Registration Act (SORA)
- An overview of SORA (MCL 28.721 *et seq*)
- Relevant Michigan State Police forms
  - MSP DD-4
  - MSP DD-4A
- Sex offender databases

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## SORA - continued

- A look at new legislation
  - 2004 PA 32, effective 6-30-2004
  - 2004 PA 237, effective 10-16-2004
  - 2004 PA 238, effective 5-01-2005
  - 2004 PA 239, effective 10-01-2004
  - 2004 PA 240, effective 10-01-2004



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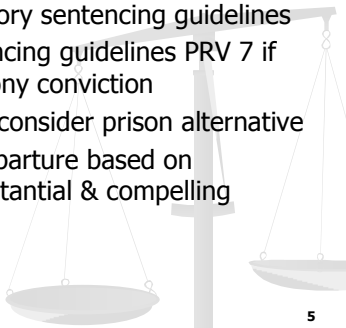
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## Probation Violations

- Must use statutory sentencing guidelines
- Re-score sentencing guidelines PRV 7 if subsequent felony conviction
- In straddle cell consider prison alternative
- Proportional departure based on articulated substantial & compelling reasons



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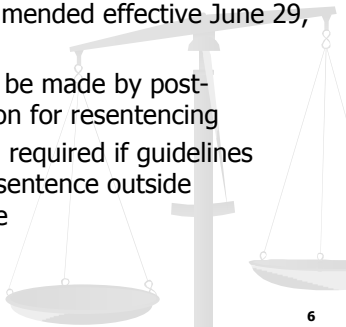
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## Guideline Objections

- MCR 6.429(C) amended effective June 29, 2004
- Objections may be made by post-conviction motion for resentencing
- No preservation required if guidelines error results in sentence outside guidelines range



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## The Implications of *Blakely v Washington* and *People v Claypool* on Michigan Sentencing

- Considerations from the bench
  - *Blakely* does not apply to prior conviction sentence enhancements
  - *Blakely* involved a state determinate sentencing scheme
  - *Blakely* majority expressed no opinion on the Federal Guidelines which were not before the Court in *Blakely*
  - Michigan's indeterminate sentencing scheme as a whole is not invalidated by *Blakely*. *People v Claypool*.
- Considerations from a prosecutor's perspective

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## The Implications of *Blakely v Washington* and *People v Claypool* on Michigan Sentencing - continued

- Consideration from a defense attorney's perspective
  - Reasoning arguably applies to both departures and scoring
  - Plea negotiations might include factual admissions at pleas in addition to necessary elements
  - Special jury instructions/allegations in information

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